CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

May 7, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 10:02 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox and Gordana Swanson were present.

Item #1. Approval of the Minutes of the April 6, 2001, Commission Meeting.

The minutes of the April 6, 2001 Commission meeting were distributed to the Commission and made available to the public. Commissioner Knox motioned that the minutes be approved. Commissioner Downey seconded the motion. There being no objection, the minutes were approved.

Item #2. Public Comment.

There was no public comment at this time.

Item #14. *In the Matter of Lawrence Lake, FPPC No. 2000/614.*

Chairman Getman reported that a stipulated settlement had been reached in this default case and that the item was being removed from the May 2001 agenda.

Item #4. Proposition 34 Regulations: Transfer and Attribution (§85306) - Pre-notice Discussion of Proposed Adoption of Regulation 18536.

Senior Commission Counsel Mark Krausse explained that this regulation deals with transfers of campaign funds to campaigns for elective state office, and that transfers to local office committees are not affected by this regulation.

Mr. Krausse noted that the contribution limits imposed by Proposition 34 require attribution in order to ensure that monies transferred into a committee are subject to those contribution limits. The attribution process identifies funds to contributors when monies are transferred.

Decision 1 - Defining LIFO and FIFO

Mr. Krausse explained that, under Proposition 73, any reasonable accounting method could be used to identify contributors when monies were being transferred. Under Proposition 34 a "first in, first out" (FIFO) or "last in, first out" (LIFO) accounting method has been prescribed to identify the contributors. The Commission must decide whether the term "accounting method" should mean that method used by accountants, or whether it is just a descriptive phrase meaning some method of showing the information on campaign statements.

Mr. Krausse stated that the accounting profession uses very specific procedures when applying the LIFO and FIFO accounting methods that are somewhat more complicated than those outlined

in the staff memorandum as the layperson approach. He then explained and contrasted the "accounting method" and the "layperson approach."

Mr. Krausse pointed out that the accounting method would be less susceptible to manipulation in the LIFO context because it spreads the money over different periods of time. Under certain scenarios with both methods, a very large contribution could be given to the original committee just before the tranfer of monies to the new committee is made, and that large contribution could be attributed to earlier contributors. The contributor of the very large contribution could then make yet another contribution to the new committee.

Mr. Krausse guided the Commission through the charts included with the staff memo, providing comparisons of the two methods, and illustrating how committees could use the methods to their advantage.

Mr. Krausse noted that the phrase "generally accepted accounting principles" was not included in Proposition 34, and that drafters of the proposition indicated to staff that they had in mind when drafting the initiative the layperson approach. He pointed out that the accounting method would be more complex to administer than the layperson approach.

Further discussion of the charts revealed an error on the first chart, line 28, which was corrected.

Accounting Specialist Bill Marland explained the accounting method of the LIFO process, and opined that although it is more complicated, it is not unreasonably difficult to apply.

In response to a question, Mr. Marland stated that he did not know how many campaigns employ professional treasurers. He believed that both methods would be enforceable.

Mr. Krausse stated that staff was recommending the layperson method because it is simpler, and because concerns about manipulation may be mitigated by proposed subdivisions in the draft regulations.

Chairman Getman noted that the layperson method was being used by the federal system.

Commissioner Downey commented that the layperson approach was the better approach, and he believed it would comply with the law. He supported the staff recommendation to use the layperson approach.

Commissioner Swanson also supported the layperson approach, because it was simpler.

Commissioner Swanson motioned that the Commission adopt Option b, the layperson approach. Commissioner Knox seconded the motion.

Chairman Getman expressed concern that the layperson method may seem to be simpler, but could be more complicated if it results in more regulations to prevent manipulation. The accounting method would be clear and enforceable, and could not be manipulated.

Commissioners Downey, Swanson, and Knox voted in favor of the motion. Chairman Getman voted "nay." The motion passed by a vote of 3-1.

Decision 2 - Method Elected Once, or Per Transfer?

Mr. Krausse explained that the Commission must determine whether committees can choose to use LIFO or FIFO with each transfer, or whether they must choose LIFO or FIFO one time only and that method would then be used for all subsequent transfers. He noted that the auditors and Franchise Tax Board (FTB) did not have a strong preference, but that it would be difficult to track per reporting period if a committee changed methods during a reporting period. Staff suggested that the same method be required for each reporting period.

Commissioner Knox motioned that the Commission accept staff's recommendation.

Chairman Getman seconded the motion.

There being no objection, the motion carried.

Chairman Getman suggested that the language on line 10 reading "pursuant to subdivision (a) of Government Code section 85306" was superfluous, and that the sentence on line 11 that ends with the words "method of accounting" should have the words "for transfers" added at the end.

Mr. Krausse referred the Commission to page 2 of the proposed regulation, explaining that it included reporting requirements as established under Proposition 73.

Chairman Getman questioned the need to disclose detailed information on attributed contributors on a campaign report, as opposed to the committee keeping the records for the transfers. She pointed out that the receiving committee would have difficulty getting the information required for the reports since the records of the transferring committee would only show address, etc., as of the time of the original contribution.

After discussion of the pros and cons of requiring such reporting, Ms. Menchaca suggested that staff continue working on the language in subdivision (b)(2) and present options at the June 8 Commission meeting for further discussion.

Chairman Getman noted that page 2, lines 7, 8 and 9 should clarify that the reported amount is the fair market value of the asset at the time of the transfer. She also asked that line 1 of page 2 and the bottom of page 1 refer to the "first" contributor as the "earliest" contributor.

Decision 3 - Prohibition on Concurrent Fundraising

Mr. Krausse explained that when a candidate with a local committee files as a candidate for state office, subsequent contributions to the local committee might appear to be for the purpose of manipulating the state contribution limits. The language in decision 3, option a, would ban the transfer of money collected after the date the candidate filed for state office. Staff was concerned that the courts may not uphold that ban, and provided option b, requiring that the committee use the LIFO method.

In response to a question, Mr. Krausse explained that any monies left after an unsuccessful campaign could be redesignated for another campaign.

Ms. Menchaca added that candidates can transfer funds from other committees.

Mr. Krausse clarified that expenditures could be made by local committees to pay their local committee bills even after the official wins a state office. Ms. Menchaca stated that staff has advised that debts for a local committee cannot be paid by a new state committee. The state committee could transfer funds to the local committee, however, and then the local committee could pay off the debt.

Commissioner Knox questioned whether the two options complied with the statute, which offers the candidates the right to choose between LIFO and FIFO.

Chairman Getman questioned how this would work in jurisdictions without contribution limits. She noted that some jurisdictions with contribution limits do not allow the transferring of campaign funds from committees outside the jurisdiction.

Mr. Krausse responded that, with the exception of the federal level where transfers are allowed on a LIFO basis, it was either banned or there was no answer to the question.

Members of the audience stated that the federal system did not allow the transferring of money from state committees.

Chairman Getman agreed with Commissioner Knox that the Decision 3 options may not be in compliance with the statute.

Commissioner Downey suggested that § 83112 allows the Commission to adopt rules and regulations carrying out the purposes and provisions of the Act.

Ms. Menchaca suggested that a third option could be developed, clarifying that if the transfer results in a violation of § 85301 and the contribution limits of § 85302, the transfer could not be done.

Chairman Getman supported the language proposed by Ms. Menchaca, noting that it may be enough to make clear that the transfers cannot be used to get around the contribution limits.

Commissioner Downey presented a hypothetical situation choosing FIFO, illustrating a loophole that could result in a committee receiving campaign contributions in excess of the statuatory limit.

Chairman Getman asked staff to work on the language in Decision 3 and bring the issue back to the Commission at the June 8, 2001 meeting.

Decision 4 - Primary/General Election Transfer Authority

Mr. Krausse explained that Proposition 34 allows a candidate to collect contributions for both the primary and general elections prior to the primary provided that they do not use the general election monies for the primary election. He believes that this was done to make fundraising easier, and suggested that the Commission could accommodate it in the regulation so that two transfers would not be required. He recommended adoption of subdivision (d).

There was no objection from the Commission.

Chairman Getman noted that subdivision (e) on page 3 of the draft regulation proposes that the regulation does not apply to transfers until after November 6, 2002. She asked whether candidates in the next statewide election who are not now subject to Proposition 34 will become subject to Proposition 34 the day after the election.

Mr. Krausse explained that Section 83 of the states it "shall apply to candidates for statewide elective office beginning on or after November 6, 2002."

Chairman Getman suggested that the language could read, "This regulation applies to committees for statewide office that are set up for elections that take place on or after November 7, 2002."

After further discussion of alternatives, Mr. Krausse requested that he be allowed to work on the language and bring it back to the Commission.

Item #3. Adoption of Opinion, *In re Pelham*, O-00-274.

Chairman Getman noted that Commissioner Scott communicated to staff her comments on the draft opinion, and that staff would be addressing those concerns as they present the draft opinion.

Commission Counsel Scott Tocher presented the Opinion, explaining that the draft was based on decisions reached at the March, 2001 meeting. Mr. Tocher noted that two letters had subsequently been received from the Los Angeles Ethics Commission (LAEC) with regard to issue #3.

Issue 1.

Mr. Tocher noted that there was no significant change from the analysis in the staff memorandum and the recommendations made with regard to § 85700. The conclusion is that there is no conflict between the city provision and the state law and so each is operable. He noted that Commissioner Scott commented that the language should be clarified to make reference to the ordinance and the Act. Mr. Tocher did not identify a substantive change.

Chairman Getman suggested that the word "ultimately" be deleted from the Item 1 summary of conclusions.

Issue 2

Mr. Tocher noted that this issue was the subject of concern from the LAEC. The Commission concluded in March that the state law, with regard to the legal defense fund, would apply to a city officeholder if the city officeholder were a candidate for state elective office. It would not apply to a city officeholder if the action arose from the city officeholder's duties. The state statute would apply to the state elective officeholder if the action arose from the officeholder's duties even if that officeholder was also in a local election. It would also apply to the state officeholder for the state election campaign.

Mr. Tocher explained that the LAEC had asked the Commission to reconsider its conclusion with regard to an incumbent elected city officeholder seeking an elected state office, and with

regard to any person seeking elective city office including an incumbent elected state officer. Mr. Tocher noted that the legal defense fund is used for both election and office holder activities.

LeeAnn Pelham, representing the LAEC, encouraged the Commission to reconsider their conclusions with regard to the legal defense fund issues. She was concerned that the conclusions reached by the Commission could undermine Los Angeles campaign finance reforms, and noted that their interests are the same as the goals of the PRA.

Tony Alperin, representing the LAEC, explained that the question of preemption begins with determining whether the city regulation is a municipal affair, and then deciding whether there is an overriding state interest.

Mr. Alperin explained that their analysis started with the status of the local official, regardless of the race the local official is running in. Los Angeles does not seek to regulate state officials or state elections, but does seek to regulate the conduct of those who are currently elected officials of Los Angeles, and those who are candidates in city elections.

Mr. Alperin disagreed that Section 85703 provides that local agencies may essentially make contrary provisions for contribution and expenditure limits with respect to local elections only. The Act does not say local elections "only."

Mr. Alperin discussed the California Supreme Court's decision in *Johnson v. Bradley* with regard to the issue of preemption, and suggested that the conduct of local officials and those seeking to become local officials was also a municipal affair.

Commissioner Downey clarified that LAEC was asking that a Los Angeles city official running for state office be subject to Los Angeles legal defense fund limit ordinances. He noted that it was different from *Johnson vs. Bradley* because the state has an overriding interest in the legal defense fund limit.

Mr. Alperin responded that the fact that the state regulation does not limit contributions to legal defense fund committees does not *ipso facto* turn the regulation into a matter of statewide concern. He stated that the courts should determine whether an overriding interest exists.

Chairman Getman stated that this may not be a Proposition 34 issue at all. Prior to Proposition 34, a state official running in a Los Angeles election could have used state campaign funds for any legitimate political, legislative or governmental purpose, which would have included legal defense funds. Mr. Alperin stated he did not disagree.

Chairman Getman pointed out that Los Angeles candidates and officials are not required to establish a legal defense fund. She questioned whether the Los Angeles ordinance would prohibit candidates and officials from paying legal expenditures out of a state campaign fund. She also noted that it would be difficult for a state official who is a local candidate subject to an election related charge as a state official to segregate funds.

Mr. Alperin responded that LAEC enacted the rules to limit contributions, allowing city officeholders who did not want to use campaign funds subject to limits to pay for their legal expenses through another account. He was not sure, but guessed that the LAEC might say that

the only funds that a city officeholder or a candidate for a city office can use for legal defense are those raised within the LAEC limits.

Mr. Alperin suggested that there was no conflict between the two laws because Proposition 34 exempted legal defense fund contributions only from limits established in Proposition 34, while Los Angeles's legal defense fund was established in a municipal ordinance.

Chairman Getman agreed that there was no conflict because there was nothing in the ordinance that restricts expenditures for legal defense to expenditures out of a legal defense fund.

Mr. Alperin suggested that staff redraft the opinion, using Chairman Getman's analysis. He noted that the Opinion was drafted to determine how Proposition 34 conflicted with the city's Act. If the Commission was going to discuss a different issue, whether other funds could be used for a legal defense, the question would be outside the scope of the current opinion.

Chairman Getman disagreed, stating she believed that the draft opinion addressed the questions posed by LAEC in the Opinion request.

Mr. Tocher stated that the question was whether Proposition 34 interfered with the city's enforcement of its campaign finance law, and that the opinion addresses the question and is consistent with the concerns expressed.

Commissioner Downey agreed.

Commissioner Knox stated that the facts here are very different from those in the *Johnson* analysis, so he did not find that analysis persuasive. He asked for clarification of LAEC's argument based on § 81013.

Mr. Alperin responded that no violation of the state Act would occur if the legal defense fund contributions were limited.

Mr. Tocher noted that § 81013 should not be read in isolation and should be read with § 85703. Section 85703 allows local agencies to impose different contribution and expenditure limits, but only for local elections.

Ms. Menchaca noted that § 81013 indicated that "additional requirements" could be imposed, but that the $1,000 limitation might be a limitation or prohibition and not an additional requirement. In that case, she asserted, § 81013 would not be used to analyze this issue. Section 81013 generally applies when local jurisdictions impose additional reporting requirements.

Commissioner Knox pointed out that § 81013 provides that the requirements of the local agency could not prevent compliance with the Act.

Ms. Menchaca responded that she questioned whether the LAEC ordinance allowing establishment of a legal defense fund should fit under "additional requirement" at all.

Mr. Alperin responded that limits are imposed in their local jurisdiction on raising funds for city election campaigns, officeholder purposes, or legal defense purposes, and that, up until the passage of Proposition 34, state law did not impose a limit. He noted that a city official who

runs for state office and does not win returns as a city official. Therefore, they have an interest in regulating whether that official received contributions to the state election campaign, which might give at least an appearance that their official actions might be affected by the interest of large campaign contributors. They also have an interest in those state officeholders who are campaigning for local office in their jurisdiction. Their requirements apply to local incumbent elected officials and candidates for local offices.

Mr. Alperin stated that the application of the city's limit does not depend on the nature of the enforcement proceeding, but on whether the person is or seeks to be a local official by running for city office.

In response to a question, Ms. Menchaca stated that a state officeholder who is a candidate for local election would probably not be allowed to use state legal defense funds to defend an enforcement action that arises out of the local election. However, she noted that if a reasonable relationship to a political purpose in connection with the state office could be articulated, then thestate defense fund could be used.

Lance Olson stated his concern that if the Commission accepts LAEC's argument, contribution limits and all other LAEC provisions would trump state law, and he did not believe that that § 81013 would allow that. If a person wanted to run for a local office, anticipating a run for legislative office the following year, and set up campaign committees for both, the city's argument would mean that the candidate would be subject to all of the city's contribution limitations for both campaigns.

Mr. Alperin responded that the city does not do that, and could not do that because the state's interest would trump the local interest. The local jurisdiction has no connection to the money that someone raises for a state office, and it was not a municipal affair.

Chairman Getman stated that the LAEC could argue that the monies were being used to unduly influence the local official, and that contributors would donate to the state campaign fund instead of the local campaign fund in order to avoid the local contribution limits.

Commissioner Knox noted that it was the same argument that could be used for the legal defense fund.

In that case, Mr. Alperin responded, the state interest in regulating contributions in its own elections would trump any interest the city might have. The local jurisdiction would no longer be arguing about a local office issue. He did not believe that they would argue that they have a right to place a limit on state elections that is higher than the limit imposed on Los Angeles elections.

Commissioner Knox pointed out that LAEC was arguing that they have a right to impose a $1,000 legal defense fund contribution limit on an incumbent city official seeking an elective state office, and questioned how that differed from not imposing something lower than the $3,000 contribution limit imposed under Proposition 34.

Chairman Getman noted that people are not always running for just a city or just a state office, and that often they run for both offices at the same time. When the legal action cannot be identified as either a local or state enforcement issue, the PRA should provide the guidance.

Mr. Alperin noted that the question before the Commission was whether the provisions of Proposition 34 interfered with the city's limits. He stated that there may need to be discussions with regard to the city's ability to regulate in other areas, but that those issues were not before the Commission at this time.

Chairman Getman suggested that conclusion 2 on page 2 of the staff memo could be redrafted to read, "Actions affecting state officeholders and candidates are governed by § 85304 regardless of the officeholder's status as a candidate in a local election," providing a broader conclusion.

She suggested an additional sentence reading, "However, if a state officeholder chooses to avail themselves of a legal defense fund under the Los Angeles ordinance, he or she would have to abide by the ordinance for that legal defense fund."

Mr. Alperin noted that it assumes that different legal defense funds are involved, and that the Commission has not yet explored what the accounting would be for legal defense funds, whether there could be a city and a state legal defense fund, and whether they would be the same thing subject to two sets of regulations.

Chairman Getman motioned that paragraph 2 on page 2 be changed to read, "Actions affecting state officeholders and state candidates are governed by § 85304 regardless of the individual's status as a candidate in a local election. However, if that individual chooses to have a legal defense fund under the Los Angeles ordinance, that particular legal defense fund will be governed by the Los Angeles rules."

Mr. Alperin asked whether that meant that a local elected official of the city of Los Angeles is not governed by those rules regardless of what election they are running in.

Chairman Getman responded that it does not address that issue.

Mr. Alperin agreed. He asked what would govern if the mayor of Los Angeles who were running for state office.

Chairman Getman responded that the mayor would be governed by § 85304. She noted that the motion would require deletion of the paragraph on page 6 that begins, "This is not to say…".

The Commission adjourned to closed session at 12:17 p.m.

The Commission returned to open session at 2:25 p.m.

Commissioner Scott joined the open session at 2:25 p.m.

Mr. Tocher presented a copy of an amended draft opinion to the Commission.

Commissioner Scott stated that the first paragraph needed a sentence that related the ordinance to the Act. She suggested that the wording include, "The effect of the ordinance on the Act...".

Mr. Tocher suggested, "Because the local ordinance does not impede compliance with the Political Reform Act,"

There was no objection from the Commission to Mr. Tocher's suggestion.

Chairman Getman asked whether the redrafted paragraph 2 was too broad.

Ms. Menchaca responded that she did not think that it was.

Mr. Tocher suggested that "a state office holder" in the first line of paragraph 2 be changed to "an elected state officer" and that "candidate for state elective office" be changed to "candidate for elective state office."

Commissioner Scott objected to the phrase "chooses to raise funds" in the second sentence of paragraph 2, questioning whether candidates actually "choose" to raise funds.

Commissioner Downey suggested that the sentence be worded, "If that individual establishes a legal defense fund created pursuant to the Los Angeles ordinance, that particular legal defense fund will be subject to the rules of that ordinance."

Commissioner Scott clarified that a state officeholder or candidate for state office would be subject to this rule, but that a city officeholder or city candidate would not be subject to the rule.

Mr. Tocher agreed.

Commissioner Knox suggested striking the second sentence of paragraph 2.

Chairman Getman expressed her concern that the wording of the first sentence would imply that an elected state officer cannot have a legal defense fund under the city ordinance, even when running for a city election.

Commissioner Knox suggested that the Commission's point is to ensure that legal defense fund rules are governed by state law when it involves a candidate for state office or a city officeholder running for state office or the converse.

Chairman Getman noted that a state elected officer who is a candidate for local office in Los Angeles could have a legal defense fund under state law that can be used for expenses associated with any election contest under state law. Additionally, that officer could choose to set up a legal defense fund under the Los Angeles ordinance if the officer has incurred legal expenses in connection with the local office candidacy.

Commissioner Knox questioned whether the statute gave the Commission authority to give a choice.

Chairman Getman responded that the statute does not preclude the officer from having the choice.

Commissioner Knox questioned whether, if the city rules were more liberal, the Commission would take the same position.

Commissioner Scott asked whether a person can use a state fund to defend themselves with regard to a city election legal action.

Chairman Getman noted that there was not a clear answer.

Chairman Getman suggested that the first sentence of paragraph 1 read, "An elected state officer or candidate for elective state office may establish a legal defense fund under § 85304 regardless of the individual's status as a local candidate or officeholder. If that individual, however, establishes a legal defense fund created pursuant to the Los Angeles ordinance, that particular legal defense fund will be subject to the rules of that ordinance."

Ms. Menchaca stated that the wording would work because, under the Los Angeles ordinance, this would be used only when it involves a sitting incumbent or a candidate for city office.

Mr. Alperin, responding to a question from Commissioner Scott, stated that there does not appear to be anything in the state or city laws that distinguishes between the city legal defense fund and the state legal defense fund. There is nothing in the law requiring that they be separate entities. The status would be determined based on the office the candidate is running for that brought about the legal violation.

Ms. Menchaca noted that staff could discuss this issue at an upcoming Interested Persons meeting and clarifying regulatory action could be considered at that time

Commissioner Downey motioned that the opinion be adopted as changed. Chairman Getman seconded the motion.

Commissioners Scott, Downey, Swanson, Knox and Chairman Getman voted "aye". The motion passed unanimously.

Item #7. Emergency Regulation 18573 - Applicability of Proposition 34 to Local Jurisdictions - Status Report.

Mr. Tocher explained that this emergency regulation expires on May 22, 2001, and was created to identify those statutes enacted by Proposition 34 which appear to be applicable in local jurisdictions. The note clarifies that the natural statutory expiration of the emergency regulation should not be construed to indicate the Commission's position on a given statute. He noted that some of the statutes would be the subject of further analysis in the near future.

Mr. Tocher, in response to a question, noted that the city of Los Angeles adopted two ordinances on Friday, May 4, 2001, relating to membership communications, regarding disclosure of payments notwithstanding § 85312. He could not yet discern whether it would be additional reporting that the state does not require. The timing of the report would be different than state requirements.

Ms. Menchaca stated that the Commission would have a prenotice discussion of § 85312 in July, 2001, and that there would be Interested Persons meetings on May 9 and May 11, 2001 with regard to this issue.

Lance Olson, representing the California Democratic Party stated that the new Los Angeles ordinances would require additional reporting that is not required under the PRA. The new ordinance would impose new timing on campaign disclosure, but would also require additional notification to the City of Los Angeles for payments for member communications.

Mr. Olson emphasized that the Democratic Party is not opposed to reporting all of its contributions and expenditures. He stated that the Democratic Party is willing to work with the FPPC with regard to the timing of reports or more frequent reporting. They were not willing to accept that each charter city could create different rules for reporting. He noted that Regulation 18573 and Government Code § 81009.5 prohibit the city of Los Angeles from passing the new ordinances. He believed that the city did not dispute the fact that there is a direct conflict between the PRA and their new ordinance, but that they believed that the state constitution home rule provision trumps the state law. Mr. Olson disagreed with that interpretation, and invited the Commission to examine the question.

Mr. Olson stated that the new ordinance is in effect now, and noted that under that ordinance, the California Democratic Party is required to file reports that they believe to be in violation of state law right now. The California Democratic Party (CDP) will be filing a request for advice as to whether the CDP is obligated to comply with the new Los Angeles ordinance.

Mr. Olson stated that the political parties are already highly regulated by the FPPC and the federal government and would be required to file ten campaign reports next year. If local jurisdictions impose additional reporting requirements, it would create difficulties for political parties especially, but also for any statewide filer who is required to file campaign disclosure reports.

Mr. Alperin saw no conflict between the new ordinances and the emergency regulation. With regard to state general purpose committees, he believed that *Johnson v. Bradley* gives LAEC the authority to require that disclosure.

Mr. Alperin explained that the LAEC needs to know about party expenditures so that their scheme of providing public matching funds to candidates can work effectively. If the payments for membership communications are kept secret, as Proposition 34 allows, the scheme cannot work effectively.

Mr. Alperin clarified that expenditure disclosures under the LAEC ordinances are only those related to Los Angeles, but that all contributors must be disclosed.

Ms. Pelham clarified that the specific information about monies spent in the city of Los Angeles was not available on the SOS reports.

Mr. Olson emphasized that the Commission should be concerned because, if the city of Los Angeles is correct and the city can adopt ordinances that require additional reporting, then there is no reason why a city cannot adopt less reporting under the PRA.

Trudy Schafer, from the League of Women Voters of California, noted that the major expenditures between April 1 and April 10 are not yet reported, further complicating the issue. She also pointed out that Proposition 208 required that a local government could enact campaign laws that were more restrictive but not less restrictive.

In response to a question, Ms. Menchaca stated that the Commission declines to advise on the validity of a local ordinance.

Chairman Getman stated that the Commission could address the issue in the context of an opinion request or as part of a regulation determining how to define membership communications and reporting of membership communications.

Mr. Alperin, in response to a question, stated that he did not believe that the Commission's emergency regulation was invalid. However, the emergency regulation provides that cities cannot impose disclosure requirements that are prohibited by that section, and since there are no disclosures prohibited by that section the city can impose disclosure requirements.

Mr. Alperin stated that the additional reporting requirements created in the new ordinances are essential to the operation of their campaign finance reform system. Mr. Alperin suggested that the concern that other local jurisdictions will impose additional reporting requirements should not be addressed until it happens and has been determined to be a problem. He agreed that the preferable system would not have different reporting requirements for different jurisdictions, but noted that, other than provisions relating to state general purpose committees, there is nothing in the Act preventing it.

Mr. Alperin disagreed with Mr. Olson's assertion that *Johnson v. Bradley* would support disclosure of less than the Act requires, and noted that the LAEC would not ever want to do that. He added that § 81013 would not support it either, and he believed that the state's disclosure requirements would trump the local jurisdiction requirements in that case.

Mr. Alperin, in response to a question, stated that some of the information they require might be duplicative, but some of it is not available and would not be available at the relevant time, prior to the city election in which the expenditures are being made.

Items #8, #9, #10, #13, and #16.

Chairman Getman motioned that the following items be approved on the consent calendar:

Item #8. ***In the Matter of Drake Kennedy, FPPC No. 97/97.*** (11 counts.)
Item #9. ***In the Matter of LA For Kids, Mike Hernandez, Samuel Ortiz, Treasurer, FPPC No., 99/820.*** (1 count.)
Item #10. ***In the Matter of California Republican Assembly Membership Action Committee, FPPC No. 99/427.*** (4 counts.)
Item #13. ***In the Matter of Christopher Pak, FPPC No. 99/741.*** (2 counts.)
Item #16. **Failure to Timely File Major Donor Campaign Statement – Streamlined Procedure.**

1st Tier Violation - $400 fine

a. ***In the Matter of Pacific States Industries, FPPC No. 2001-0029.*** (1 count).
b. ***In the Matter of Webvan Group, Inc., FPPC No. 2001-0047.*** (1 count).
c. ***In the Matter of Melissa Seifer, FPPC No. 2001-0133.*** (1 count).

d. ***In the Matter of D. R. Horton Management Company, Ltd., FPPC No. 2001-0135.*** (1 count).
e. ***In the Matter of AB&I Foundry, FPPC No. 2001-0136.*** (1 count).
f. ***In the Matter of Lori Clem, FPPC No. 2001-0138.*** (1 count).
g. ***In the Matter of Harris & Associates, FPPC No. 2001-0137.*** (1 count).

3rd Tier Violation - 15% fine (Not to exceed statutory maximum)

h. ***In the Matter of Ted Waitt, FPPC No. 2001-0134.*** (1 count).

There being no objection, the items were approved on the consent calendar.

Item #5. Campaign Disclosure Forms - Proposition 34 Campaign Disclosure Issues

Technical Assistance Division Chief Carla Wardlow presented a staff memorandum outlining the Form 460 and several issues with regard to campaign disclosure related to provisions added by Proposition 34.

Ms. Wardlow explained that new disclosure requirements were imposed under § 84511 with regard to support or opposition of the qualification, passage or defeat of a state or local ballot measure. Staff recommended that a legislative amendment be requested in order to implement the reporting provisions. The new section imposes the disclosure requirement on the individual who is appearing in an advertisement, regardless of whether they are in any way connected to the campaign. This could even include an actor appearing in an advertisement. To be consistent with the structure of the rest of the Act, she suggested that a reporting obligation be created for the campaign committee that funds the advertisement

Commissioner Scott suggested that staff look to the FTC models for guidance. She did not think that distinctions should be made between a political person and a non-political person.

Chairman Getman strongly supported the staff's recommendation for a legislative solution.

Ms. Wardlow proposed language that moves the reporting requirement from the individual to the campaign committee making the payment for the advertisement, as well as a few other clarifying phrases to establish what will need to be disclosed.

There was no objection to authorizing staff to seek a legislative amendment.

Issue 1: Should additional disclosure related to contribution limits and expenditure ceilings be required?

Ms. Wardlow explained that staff presented the Form 460 at the March 2001 Commission meeting. The Commission directed staff to further revise the form, implementing changes required by Proposition 34.

Ms. Wardlow noted that there is nothing in the PRA that authorizes or mandates that any additional disclosure be made on the Form 460. However, the regulated community has indicated that the disclosure may be desirable for purposes of demonstrating compliance with

Proposition 34, for enforcement as well as for public monitoring purposes. Disclosure may also help avoid the filing of erroneous complaints.

Ms. Wardlow noted that the memorandum also outlines reasons to make no changes at this time.

A third alternative discussed by staff, Ms. Wardlow explained, is to implement the changes for electronic filers only.

Ms. Wardlow stated that the form must be changed now because the SB 2076 legislative amendments must be incorporated into the form. By incorporating some of the Proposition 34 changes before the next election cycle, staff would gain some experience and be better able to determine the effectiveness of this type of reporting.

Chairman Getman questioned whether the electronic form and paper form were supposed to be the same.

Ms. Wardlow responded that the software could work if the people that file electronically file a paper form that has the same information on it.

Ms. Menchaca stated that electronic filing requirements apply to Chapters 4 and 6, but do not apply to chapter 5, which has to do with contribution limits. She suggested that if the Form 460 changes on the summary page could raise issues under Chapter 5 it would be prudent to approach the issue cautiously.

Chairman Getman stated that she saw benefits to some of the contribution reporting schemes, but was dubious about the expenditure reporting proposals because there were significant substantive issues that the Commission needs to decide before changing the form.

Ms. Menchaca agreed and suggested that the Commission might want to consider waiting to change the Form 460 until after the issues had been resolved by the Commission.

Ms. Wardlow agreed that the issues overlap.

Chairman Getman stated that the Commission needed to decide whether to implement a "stop gap" measure while the substantive decisions were being made.

Chairman Getman noted that she was in favor of some contribution reporting changes. The Form 460 may or may not need to be changed, depending on the decisions of the Commission with regard to such issues as whether there should be separate accounts or separate committees.

Issue 2: **Should state candidates be required to establish separate bank accounts and committees for each election?**

Ms. Wardlow noted that even if the Commission were to decide later in the year that separate accounts and committees would be required for the primary and general elections, staff may not be able to implement that decision until the 2004 election. Because many candidates are already raising money in their 2000 account for 2002, breaking those accounts up may cause too much chaos for the candidates.

Chairman Getman questioned how committees raising money now could designate on the report whether the money was being raised for the primary or general elections, and how they would deal with the reports that they have already filed.

Ms. Wardlow responded that the previously filed reports will not contain that information. Staff hopes to have the issues settled in time for the SOS to program changes to the electronic filing forms in time for the pre-election reports that are due on October 10, 2001.

Chairman Getman clarified that, if the changes are made to Schedule A, it would allow designation of monies per election. However, even though the form would accommodate that designation, the Commission will not decide whether to require that the information be designated in that manner until a later time. Additionally, since monies collected already have not been designated in that manner, she questioned whether it even made sense to make the form changes now.

Ms. Wardlow agreed that it may be too late, noting that for the October 10, 2001 report, filers would have to recalculate cumulative contributor amounts previously reported for the primary or general elections.

Commissioner Swanson stated that she favors full disclosure to protect the public, but noted that changing the filing requirements this quickly may create too many problems for the filers.

Ms. Wardlow stated that Issue 2 was a recommendation that the Commission consider a regulation on that issue as part of its reglatory calendar.

Ms. Menchaca clarified that the regulation plan approved for Proposition 34 did not include a project dedicated to examining issues pertaining to the "single bank account rule," and the impact of having separate committees for legal defense funds and other parts of Proposition 34. Issue 2 recommended that these issues be added to the Proposition 34 regulatory plan.

There was no objection from the Commission to adding that project to the regulatory plan.

Issue 3: Should the Form 460 summary page be revised at this time to include a summary for total contributions received and expenditures made for the primary and general elections?

Ms. Wardlow explained that this proposed change would provide a place on the summary page for candidates to recap how much they had received and spent in connection with the elections. Line 23 would only apply to those candidates who had accepted the voluntary expenditure ceiling.

Ms. Wardlow discussed the staff memo, which outlines whether there would be a way to develop a meaningful figure for Line 22.

In response to a question from Chairman Getman concerning the title for Column B, Ms. Wardlow explained that the statute has a specific requirement for a calendar year cumulative to date figure for contributions received and expenditures made.

Diane Fishburn, with Olson, Hagel, Waters and Fishburn, noted that the letter from the SOS indicated that if contributions were coded, it would make more information available. She supported having candidates designate whether contributions were for the primary or general elections. Most clients have asked that she go back and code the contributions since the beginning of 2001 when the limits went into effect

Ms. Fishburn shared some of the concerns expressed by the Chairman with regard to expenditures.

Chairman Getman asked whether reports that have already been filed and have not been coded for the primary or general elections would be inaccurate.

Ms. Fishburn responded that they would go back to the beginning of the year and code them.

Caren Daniels-Meade, from the SOS, stated that the electronic reports could reflect the changes to a previously filed report if an amendment were filed.

There was no objection from the Commission to taking the limitation summary for contributions off the form and relying on the SOS Cal-Access Program to get a cumulative amount.

Chairman Getman noted that putting cumulative expenditures on the form would allow the public to see whether the candidate is still within the expenditure ceiling if the candidate chose to accept the voluntary expenditure ceiling.

Ms. Wardlow agreed, noting that there is currently no other way for the public to get the primary/general election information.

Commissioner Swanson stated that it was an important component, but thought it was too soon to incorporate into the forms.

Ms. Fishburn shared Commissioner Swanson's concern, and was additionally concerned that the Commission has not yet decided all of the issues relative to expenditures and expenditure ceilings. Other issues, such as whether in-kind contributions will count toward the expenditure ceiling, still need to be addressed and could also affect the form.

In response to a question, Ms. Wardlow stated that the final version of the form would have to be brought back to the Commission for approval in June in order to be available for the 2002 election.

Chairman Getman noted that some candidates have already made their choice about whether to accept voluntary expenditure ceilings. Those candidates who accept the expenditure ceilings will have to have some way to track their expenditures in order to know that they are under the limit.

Chairman Getman stated that if the form is revised now, people could use it. If it is not revised now, there would be no way for people to demonstrate that they are within the voluntary expenditure limit.

Ms. Wardlow suggested that it could be included as an optional section of the form.

Chairman Getman suggested that the Commission change the form so that people can demonstrate compliance with the voluntary expenditure ceiling, if they have chosen to accept it.

Commissioner Swanson noted that making the item optional would make it less meaningful, and that, if a person chose not to complete the item, a member of the public might believe that the person was not willing to disclose the information. She asked staff when this could be revisited to make it a mandatory item, after the Commission has had more time to study the question as it relates to expenditures and in-kind contributions.

Ms. Menchaca responded that it could be done if a separate form were developed. She saw no harm with leaving it a permissive section of the Form 460.

Chairman Getman suggested that it could be treated the same way as the contributions, if coding expenditures, in terms of whether they were subject to the expenditure ceiling or not.

Ms. Wardlow agreed, noting that if expenditures were being coded, the same type of analysis could be done from the electronic filing perspective.

There was no objection from the Commission to bringing the form back in June with the optional voluntary expenditure box on the form. The Commission will consider at that time whether to keep "optional" on the form.

Issue 4: Should cumulative totals per contributor per election be disclosed for contributions reported on Schedules A, B, and C at this time?

Ms. Wardlow explained that the SOS could capture the proposed Form 460 information and display it on their web site.

There was no objection from the Commission.

Issue 5. Should new contributor codes be added to Schedules A, B, and C to identify contributions from small contributor committees and political parties?

Chairman Getman noted that small contributor committee codes are helpful because those committees are allowed to make double the contribution limits.

Ms. Wardlow, in response to a question, noted that the party code can be helpful because it may not be clear that a party is making the contribution if it involves county central committees. She noted that the Enforcement Division thought the SCC code would be helpful.

Ms. Daniels-Meade commented that if party codes are included it would enable the SOS to do additional displays on their web site.

There was no objection to including the new contributor codes on the schedules.

Issue 6. Should committees be required to disclose, for contributions made to state candidates, the cumulative amount contributed per election?

Ms. Wardlow explained that Schedule D is a summary of a committee's independent expenditures and contributions to candidates or other committees. She noted that the proposal includes a second column on the form for listing the contributions per election to date.

There was no objection from the Commission.

Ms. Fishburn questioned whether the new column language "if subject to limits" pertained only to state limits. She noted that the staff memo indicated that the new Schedule D information would also be required on the expenditure schedule of the Form 461, and that the new column could pose problems in that context.

Chairman Getman responded that she thought that all of the changes being made were for developing a Form 460 for Proposition 34 candidates.

Ms. Wardlow agreed, but noted that everyone used this form. She was not planning to make a separate form just for state candidates, and noted that staff would include language in the instructions indicating that it only needed to be filled out if contributions were made to state candidates subject to contribution limits. She suggested that staff could add the wording, "If subject to state limits" in the title if it would be helpful. Some local jurisdictions have used the existing form setup to require that committees active in their jurisdiction provide information relative to their own limits.

Chairman Getman clarified that the FPPC can only require what they can enforce, although local jurisdictions could use the form if they choose to.

Jim Knox, representing California Common Cause, noted that the forms are filed by candidates and ballot measure committees. He supported the use of "per election to date" and urged the Commission to leave it on the form. He proposed that the Commission also require cumulative information for the entire election cycle for ballot measures.

Ms. Wardlow suggested that the issue might be considered as part of the campaign reporting project, noting that it might require a regulation or a legislative action.

Chairman Getman agreed.

Issue 7: Should state candidates be required to identify on Schedules E and F the particular election for which a payment has been made?

Ms. Wardlow asked the Commission to decide whether to require identification of the election for which an expenditure is made. She noted that the Commission may be asked whether that expenditure can be apportioned out to more than one election.

Chairman Getman stated that this involved a substantive issue requiring that the Commission decide whether to report the expenditure by date, whether to allow people to choose which election to allocate the expenditure to, or whether to allow people to change their mind after allocating the money. The questions involved significant statutory interpretation issues and policy questions, and the Commission needs to address those issues before deciding how the form should look.

Commissioner Scott questioned whether it was a double determination, with the person coding the expenditure the way they think it should be coded, and staff then making the determination?

Ms. Wardlow responded that it is a very difficult concept. She suggested that the Commission consider having the candidate make a good faith estimate on the summary page and not try to provide the detail on the expenditure schedules, or vice-versa.

Ms. Menchaca noted that certain types of payments enumerated in the contribution definition will count toward the expenditure limit under Proposition 34. The instructions would simply repeat the language in the statute.

The Commissioners discussed the pros and cons of revising the form prior to making the substantive police decisions.

Ms. Wardlow clarified that delaying the form changes until after the regulation is adopted would mean that the forms would not be available for the 2002 election, except for the cumulative total on the front of the Form 460 and some guidelines that staff hopes to provide in September to the candidates.

In response to a question, Chairman Getman stated that the Commission would be able to enforce 99% of the Proposition 34 requirements for the next election. She did not know whether expenditure reporting issues would be resolved in time to enforce the Proposition 34 expenditure limits for the next election.

Commissioner Swanson agreed that it would be better to wait.

Commissioner Scott disagreed, stating that the Commission should have the provision for the information on the form and change the instructions later.

Commissioner Downey and Knox agreed to wait.

Issue 8: Should additional expenditure codes be added to Schedules E, F, and G?

Ms. Wardlow noted that staff recommended adding three new expenditure codes to the schedules: One for a candidate's filing and ballot statement fees; one for legal defense payments; and one for payments for member communications.

There was no objection from the Commission to the expenditure codes.

Issue 9. Should other options be further explored and presented in June?

Ms. Wardlow explained that a few other reporting options had been discussed but she recommended that the Commission wait to consider these options. Once the question of separate accounts and separate committees is resolved, these options will be easier to deal with.

There was no objection from the Commission to postponing these proposals.

Chairman Getman suggested that the Commission postpone discussion of 18421.4 to another time.

Item #6. Campaign Disclosure - New Electronic/Online Disclosure Reports; Discussion of Draft Regulations 18539, 18539.2 and 18550.

Ms. Wardlow explained that three new online electronic disclosure reports were established by Proposition 34 that do not require paper filings. Staff presented draft regulations to assist the SOS by creating a means of implementing the filing requirements.

Ms. Wardlow noted that there were already forms that could be used to implement two of the new reports. The last report is a new filing requirement for reporting payments for issue advocacy. The proposed regulations will be presented to the Commission for emergency adoption in June.

Chairman Getman stated that the proposed regulations looked great.

Ms. Wardlow reported that the SOS has requested that the Commission assign a form number to the issue advocacy form, and that staff was working on that.

Ms. Menchaca noted that, if adopted, in order for the emergency regulations to be effective right away, it needs to be the version noticed for adoption. She requested that the Commission make decisions about the options so that the language would be available quickly.

Ms. Wardlow stated that the statute for the issue advocacy section outlines what needs to be reported. However, staff believed that a few things were left off of the list that would help the SOS to track and process the information. Staff added ID numbers, the date of the payment, the name of the candidate identified in the communication, and information to identify amendments.

There was no objection from the Commission to option 1.

Ms. Wardlow explained that this will be the first reporting form for which there will not be a signature requirement. Option 2 gives the Commission the options of presuming that anything filed under Government Code section 85310 is filed under penalty of perjury, or require that the forms be filed on paper so that a signature can be affixed to it.

Chairman Getman questioned whether presuming it to be filed under penalty of perjury would be legally binding.

Ms. Menchaca stated that this would be a Chapter 5 filing, and is not covered under the current electronic filing statutes, where specific language was written relating to presumptions under penalty of perjury. She agreed that there might be an authority issue.

Commissioner Swanson suggested that, instead of a signature, and electronic secret code be used for a signature.

Chairman Getman responded that establishing those codes could be difficult. She did not believe that paper filings should be required because the reports were intended to be filed only online.

Commissioner Downey noted that the Franchise Tax Board allows electronically filed returns and requires the taxpayer to keep a signed copy in their personal records. He suggested that the Commission tell the filers that they must keep a signed copy in their personal records.

Chairman Getman asked if the SOS could provide a button on the online form that would allow the filer to print a copy with a signature line that would read, "I declare under penalty of perjury…".

Ms. Daniels-Meade stated that it could be done.

Ms. Menchaca stated that the record keeping requirement language could be added to the regulation by staff.

There was no objection from the Commission.

Commissioner Knox suggested that the signature line read, "No party shall file this electronically except under penalty of perjury. You will retain a paper copy for your own records." With that language, he noted, the only enforcement issue would be proving that the filer was the one who submitted the form.

There was no objection from the Commission.

Item #17. Legislative Report.

Item #1. Delegation of Authority

Senior Commission Counsel Mark Krausse explained that the Commission had, since 1998, acted between meetings on legislative issues by virtue of a resolution delegating authority to the Chairman's Advisory Subcommittee on Legislation. He recommended that Commissioner Knox be appointed to that Subcommittee, replacing former Commissioner Deaver.

There was no objection from the Commission.

Item #2. SB 300 (McPherson) McPherson Comm. recommendations

Mr. Krausse requested authority from the Commission for FPPC staff to work with the author to provide input with regard to the recommendations of the McPherson Commission.

Chairman Getman explained that the recommendations were presented to the FPPC last fall, and that this would allow staff to communicate information to Mr. McPherson.

There was no objection from the Commission.

Item #3. SB 720 (Margett) Conflicts of Interest: L.A. Care Health Plan.

Mr. Krausse noted that the Commission has opposed this bill. He explained that the bill has been amended to remove the offensive paragraph, and Mr. Krausse recommended that the Commission take a neutral position on the bill.

There was no objection from the Commission.

Items #18 and #19.

Chairman Getman stated that the following items will be taken under submission:

Item #18. Executive Director's Report.
Item #19. Litigation Report.

Chairman Getman reported that the Commission concluded their closed session meeting during the lunch hour.

Item #11, #12, and #15.

Chairman Getman stated that the following enforcement matters would be considered at the June 2001 Commission meeting:

Item #11. ***In the Matter of Roger Klorese, FPPC No. 00/403.***
Item #12. ***In the Matter of Robert Prenter and the Committee to Elect Robert Prenter for Assembly, FPPC No. 96/304.***
Item #15. ***In the Matter of Linda Engleman, FPPC No. 01/76.***

The meeting adjourned at 4:36 p.m.

Dated: June 8, 2001

Respectfully submitted,

_____
Sandra A. Johnson
Executive Secretary

Approved by:

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Chairman Getman